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REFERENCE TITLE: well administration and enforcement

State of Arizona
House of Representatives
Forty-sixth Legislature
First Regular Session
2003

HB 2088

Introduced by
Representatives O'Halleran, Carruthers, Gullett: Cannell, Hershberger,
Hubbs

AN ACT

AMENDING SECTION 45-596, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2002, CHAPTER 133, SECTION 4; AMENDING SECTION 45-599, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 2, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-606; RELATING TO WELLS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 45-596, Arizona Revised Statutes, as amended by
3 Laws 2002, chapter 133, section 4, is amended to read:

4 45-596. Notice of intention to drill; fee

5 A. In an area not subject to active management, a person may not drill
6 or cause to be drilled any well or deepen an existing well without first
7 filing notice of intention to drill pursuant to subsection C of this section
8 or obtaining a permit pursuant to section 45-834.01.

9 B. In an active management area, a person may not drill or cause to be
10 drilled an exempt well, a replacement well in approximately the same location
11 or any other well for which a permit is not required under this article,
12 article 7 of this chapter or section 45-834.01 or deepen an existing well
13 without first filing a notice of intention to drill pursuant to subsection C
14 of this section.

15 C. A notice of intention to drill shall be filed with the director on
16 a form which is prescribed and furnished by the director and which shall
17 include:

- 18 1. The name and mailing address of the person filing the notice.
- 19 2. The legal description of the land upon which the well is proposed
20 to be drilled and the name and mailing address of the owner of the land.
- 21 3. The legal description of the location of the well on the land.
- 22 4. The depth, diameter and type of casing of the proposed well.
- 23 5. Such legal description of the land upon which the groundwater is
24 proposed to be used as may be required by the director to administer this
25 chapter.
- 26 6. When construction is to begin.
- 27 7. The proposed uses to which the groundwater will be applied.
- 28 8. The name and well driller's license number of the well driller who
29 is to construct the well.
- 30 9. The design pumping capacity of the well.
- 31 10. If for a replacement well, the maximum capacity of the original
32 well and the distance of the replacement well from the original well.
- 33 11. Proof that the director determines to be satisfactory that the
34 person proposing to construct the well holds a valid license issued by the
35 registrar of contractors pursuant to title 32, chapter 10 and that the
36 license is of the type necessary to construct the well described in the
37 notice of intention to drill. If the proposed well driller does not hold a
38 valid license, the director may accept proof that the proposed well driller
39 is exempt from licensing as prescribed by section 32-1121.
- 40 12. If any water from the proposed well will be used for domestic
41 purposes as defined in section 45-454, evidence of compliance with the
42 requirements of subsection F of this section.
- 43 13. If for a second exempt well at the same location for the same use
44 pursuant to section 45-454, subsection E, proof that the requirements of that
45 subsection are met.

1 14. Such other information as the director may require.

2 D. Upon receiving a notice of intention to drill **AND THE FEE REQUIRED**
3 **BY SUBSECTION I OF THIS SECTION**, the director shall endorse on the notice the
4 date of its receipt. The director shall **THEN** determine whether all
5 information that is required has been submitted and whether the requirements
6 of subsection C, paragraphs 11 and 12 of this section have been met. If so,
7 within fifteen days of receipt of the notice, the director shall record the
8 notice, mail a drilling card that authorizes the drilling of the well to the
9 well driller identified in the notice and mail written notice of the issuance
10 of the drilling card to the person filing the notice of intention to drill at
11 the address stated in the notice. Upon receipt of the drilling card, the
12 well driller may proceed to drill or deepen the well as described in the
13 notice of intention to drill. If the director determines that the required
14 information has not been submitted or that the requirements of subsection C,
15 paragraphs 11 and 12 of this section have not been met, the director shall
16 mail a statement of the determination to the person giving the notice to the
17 address stated in the notice, and the person giving the notice may not
18 proceed to drill or deepen the well.

19 E. The well shall be completed within one year after the date of the
20 notice. If the well is not completed within one year, the person shall file
21 a new notice before proceeding with further construction.

22 F. If any water from a proposed well will be used for domestic
23 purposes as defined in section 45-454 on a parcel of land of five or fewer
24 acres, the applicant shall submit a well site plan of the property with the
25 notice of intention to drill. The site plan shall:

26 1. Include the county assessor's parcel identification number.

27 2. Show the proposed well location and the location of any septic tank
28 or sewer system that is either located on the property or within one hundred
29 feet of the proposed well site.

30 3. Show written approval by the county health authority that controls
31 the installation of septic tanks or sewer systems in the county, or by the
32 local health authority in areas where the authority to control installation
33 of septic tanks or sewer systems has been delegated to a local authority. In
34 areas where there is no local or county authority that controls the
35 installation of septic tanks or sewer systems, the applicant shall apply for
36 approval directly to the department of water resources.

37 G. Before approving a well site plan submitted pursuant to subsection
38 F of this section, the county or local health authority or the department of
39 water resources, as applicable, pursuant to subsection F of this section,
40 shall review the well site plan and determine whether the proposed well
41 location complies with applicable local laws, ordinances and regulations and
42 any laws or rules adopted under this title and title 49 regarding the
43 placement of wells and the proximity of wells to septic tanks or sewer
44 systems. If the health authority or the department of water resources, as
45 applicable, pursuant to subsection F of this section, finds that the proposed

1 well location complies with this title and title 49 and with local
 2 requirements, it shall endorse the site plan and the proposed well placement
 3 in a manner indicating approval. On endorsement, the director of water
 4 resources shall approve the construction of the well, if all remaining
 5 requirements have been met. If the health authority is unable to determine
 6 whether the proposed well location complies with this title and title 49 and
 7 local requirements, it shall indicate this on the site plan and the decision
 8 to approve or reject the proposed construction rests with the director of
 9 water resources. If parcel size, geology or location of improvements on the
 10 property prevents the well from being drilled in accordance with this title
 11 and title 49 or local requirements, the property owner may apply for a
 12 variance. The property owner shall make the request for a variance to the
 13 county or local authority if a county or local law, ordinance or regulation
 14 prevents the proposed construction. If a law or rule adopted under this
 15 title or title 49 prevents the proposed construction, the property owner
 16 shall make the request for a variance directly to the department of water
 17 resources. The request for a variance shall be in the form and shall contain
 18 the information that the department of water resources, county or local
 19 authority may require. The department of water resources, or the county or
 20 local authority whose law, ordinance or regulation prevents the proposed
 21 construction, may expressly require that a particular variance shall include
 22 certification by a registered professional engineer or geologist that the
 23 location of the well will not pose a health hazard to the applicant or
 24 surrounding property or inhabitants. If all necessary variances are
 25 obtained, the director of water resources shall approve the construction of
 26 the well if all remaining requirements have been met.

27 H. If a well that was originally drilled as an exploration well, a
 28 monitor well or a piezometer well or for any use other than domestic use is
 29 later proposed to be converted to use for domestic purposes as defined in
 30 section 45-454, the well owner shall file a notice of intention to drill and
 31 shall comply with this section before the well is converted and any water
 32 from that well is used for domestic purposes.

33 I. A NOTICE OF INTENTION TO DRILL FILED UNDER THIS SECTION SHALL BE
 34 ACCOMPANIED BY A FILING FEE OF ONE HUNDRED TWENTY DOLLARS. THE DIRECTOR
 35 SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND 35-147, ALL FEES COLLECTED
 36 PURSUANT TO THIS SUBSECTION IN THE WELL ADMINISTRATION AND ENFORCEMENT FUND
 37 ESTABLISHED BY SECTION 45-606.

38 Sec. 2. Section 45-599, Arizona Revised Statutes, is amended to read:

39 45-599. Permit application; contents; correction of defective
 40 application; issuance of permit; fee

41 A. An application for a permit to construct a new well or replacement
 42 well in a new location shall be made on a form THAT IS prescribed and
 43 furnished by the director ~~which shall include~~ AND THAT INCLUDES:

44 1. The name and mailing address of the applicant.

1 2. The legal description of the land upon which the new well is
2 proposed to be constructed and the name and mailing address of the owner of
3 the land.

4 3. The legal description of the proposed location of the new well on
5 the land.

6 4. If for a replacement well, the legal description of the land upon
7 which the original well is located, the name and mailing address of the owner
8 of the land, the legal description of the location of the original well on
9 the land, the depth and diameter of the original well and evidence of proper
10 abandonment.

11 5. The depth, diameter and type of casing of the new well.

12 6. Such legal description of the land upon which the groundwater is
13 proposed to be used as may be required by the director to administer this
14 chapter.

15 7. When construction is to begin.

16 8. The proposed use of the groundwater to be withdrawn.

17 9. The design pumping capacity of the new well.

18 10. The name and well driller's license number of the well driller who
19 is to construct the well.

20 11. The estimated time required to complete the well, if more than one
21 year from the date of receipt of the permit.

22 12. Such other information including any maps, drawings and data as the
23 director may require.

24 B. Upon receipt of a permit application **AND THE FEE REQUIRED BY**
25 **SUBSECTION J OF THIS SECTION**, the director shall endorse on the application
26 the date of its receipt. If the application is incorrect or incomplete, the
27 director may request additional information from the applicant. The director
28 may conduct independent investigations as may be necessary to determine
29 whether the application should be approved or rejected.

30 C. The director shall approve an application for a permit for a new
31 well or a replacement well in a new location if the proposed well complies
32 with the rules adopted pursuant to section 45-598, subsection A and, if the
33 proposed well is in the Santa Cruz active management area, if the location of
34 the proposed well is consistent with the management plan for the active
35 management area.

36 D. Except as provided in subsection E of this section, within sixty
37 days of receipt of a complete and correct application **AND THE FEE REQUIRED BY**
38 **SUBSECTION J OF THIS SECTION**, the director shall approve or reject the
39 application and mail notice of the action to the applicant.

40 E. If the director determines that an administrative hearing should be
41 held before approving or rejecting an application, the director shall notify
42 the applicant of the date of the hearing within sixty days of receipt of the
43 complete and correct application **AND THE FEE REQUIRED BY SUBSECTION J OF THIS**
44 **SECTION**.

1 F. If at the request of the applicant the director determines that an
2 emergency exists, the director shall expedite all decisions under this
3 section.

4 G. If the application is approved, the director shall issue a permit
5 and the applicant may proceed to construct the well. If the application is
6 rejected, the applicant shall not proceed with construction of the well. The
7 well shall be completed within one year of receipt of the permit, unless the
8 director in granting the permit approves a longer period to complete the
9 well. If the well is not completed within one year or the longer period
10 approved by the director, the applicant shall file a new application before
11 proceeding with construction.

12 H. The permit shall state the following:

13 1. The legal description of the land upon which the well may be
14 constructed.

15 2. The legal description of the location of the new well on the land.

16 3. The depth and diameter of the well and type of casing.

17 4. The maximum pumping capacity of the well.

18 5. The legal description of the land upon which the groundwater will
19 be used.

20 6. The use of the groundwater to be withdrawn.

21 7. The latest date for completing the well.

22 I. Section 45-114, subsections A and B govern administrative
23 proceedings, rehearing or review and judicial review of final decisions of
24 the director under this section. If an administrative hearing is held, it
25 shall be conducted in the active management area in which the use is located.

26 J. AN APPLICATION FOR A PERMIT FILED UNDER THIS SECTION SHALL BE
27 ACCOMPANIED BY A FILING FEE OF ONE HUNDRED TWENTY DOLLARS. THE DIRECTOR
28 SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND 35-147, ALL FEES COLLECTED
29 PURSUANT TO THIS SUBSECTION IN THE WELL ADMINISTRATION AND ENFORCEMENT FUND
30 ESTABLISHED BY SECTION 45-606.

31 Sec. 3. Title 45, chapter 2, article 10, Arizona Revised Statutes, is
32 amended by adding section 45-606, to read:

33 45-606. Well administration and enforcement fund; purpose

34 A. THE WELL ADMINISTRATION AND ENFORCEMENT FUND IS ESTABLISHED
35 CONSISTING OF FEES PAID TO THE DEPARTMENT PURSUANT TO SECTION 45-596,
36 SUBSECTION I AND SECTION 45-599, SUBSECTION J. THE DEPARTMENT SHALL
37 ADMINISTER THE FUND. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED AND
38 SHALL BE USED BY THE DIRECTOR FOR THE FOLLOWING PURPOSES:

39 1. FOR THE REASONABLE AND NECESSARY COSTS OF THE DEPARTMENT TO
40 IMPLEMENT THIS ARTICLE.

41 2. FOR COMPLIANCE MONITORING, INVESTIGATION AND ENFORCEMENT ACTIVITIES
42 OF THE DEPARTMENT PERTAINING TO THE CONSTRUCTION, REPLACEMENT, DEEPENING AND
43 ABANDONMENT OF WELLS AND CAPPING OF OPEN WELLS UNDER THIS ARTICLE.

1 B. THE FUND SHALL BE A SEPARATE ACCOUNT ON THE BOOKS OF THE
2 DEPARTMENT. MONIES REMAINING IN THE FUND AT THE END OF THE FISCAL YEAR
3 REMAIN IN THE FUND AND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190
4 RELATING TO THE LAPSING OF APPROPRIATIONS. ON NOTICE FROM THE DIRECTOR, THE
5 STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED BY
6 SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE
7 FUND.

8 Sec. 4. Requirements for enactment; two-thirds vote

9 Pursuant to article IX, section 22, Constitution of Arizona, this act
10 is effective only on the affirmative vote of at least two-thirds of the
11 members of each house of the legislature and is effective immediately on the
12 signature of the governor or, if the governor vetoes this act, on the
13 subsequent affirmative vote of at least three-fourths of the members of each
14 house of the legislature.